In the United States Patent and Trademark Office

In re the Application of:

Leland James Wiesehuegel	)
Serial Number: 09/726,009	)
Docket Number: AUS9-2000-0738US1	)
Filed on: 11/29/2000	)
For: "System and Method for Online	)
Offer and Bid Management with Sealed	)
Bids"	)

Group: 3696

Examiner: Clement B. Graham

APPEAL BRIEF

(Second Reinstatement)

Real Party in Interest per 37 CFR §41.37(c)(1)(i)

The subject patent application is owned by International Business Machines Corporation of Armonk, NY.

Related Appeals and Interferences per 37 CFR §41.37(c)(1)(ii)

None.

Status of Claims per 37 CFR §41.37(c)(1)(iii)

The rejections of Claims 13 and 15 - 31 are appealed. Claims 1 - 12 and 14 are cancelled.

Status of Amendments after Final Rejections per 37 CFR §41.37(c)(1)(iv)

No amendments to the claims have been submitted or entered after final rejections.

Summary of the Claimed Subject Matter per 37 CFR §41.37(c)(1)(v)

       The present invention provides sales offering method and system for restricting access by traders to collected sealed bids in an online auction-like business-to-business offering and bidding system (pg. 12 lines 8 - 14). In this particular business-to-business offering arrangement, a "trader" is an intermediary third party (Fig. 2 #24) between a purchasing broker (Fig. 2 #25), and a offeror (Fig. 2 #21). This type of three-party auction-like offering system is employed by some manufacturers to promote sales of products to retail outlets via a trader or broker (pg. 12 lines 2 - 3).

       Responsive to querying the bid repository by a trader for bids which match parameters of a Broker Profile Matrix (Fig. 4) associated with the bidding-party (e.g. the broker) (Fig. 7 #73 and #76, pg. 20 lines 11 - 14), only bids which are indicated as being unsealed by the seal status indication field (and which match the Broker Profile Matrix parameters), the details of the unsealed are presented to the trader and the details of the sealed bids are prevented from presentation (pg. 20, lines 11 - 14).

       Thus, through employing the present invention, a three-party business-to-business offering system is enabled to suppress showing details of sealed bids to traders, while showing details only of unsealed bids which match the Broker's Profile Matrix.

       More specifically, claim 13 sets forth a sales offering system for restricting access by traders to collected online sealed bids in an online offering and bidding system as follows:

       a bid database *(pg. 15 lines 8 - 10, Fig. 5 #52)* in a network computer arrangement containing collected bids, said collected bids each having an associated seal status indication field *(pg. 19 line 21 - pg. 20 line 4)* for indicating whether each bid is a sealed bid or is an unsealed bid;

       a database query server querying *(pg. 16 lines 8 - 15)* said bid database for unsealed bids which match parameters of a Broker Profile Matrix *(pg. 13 line 13 - pg. 15 line 7; Fig. 4)* associated with a trader console, said trader console comprising an intermediary third party user console communicably disposed between a bidder user console and broker user console, said trader console operating to buy products or services from said broker user console, and operating to resell said bought products and services to said bidder user console *(a "trader" user is an*

intermediary third party as shown in Fig. 2 #21, #24 and #25, so a trader console is a console for use by a trader user);

a bid transferor responsive to finding matching unsealed bids for said trader console delivering said matching unsealed bids to said trader console, and preventing delivery of sealed bids to said trader console *(unsealed bids are delivered from the bidding system to the trader's console, sealed bids remain at the bidding system, per pg. 20 lines 11 - 14, and pg. 21 lines 4 - 7)*; and

a display on said trader console of said delivered matching unsealed bids to a trader console user *(pg. 21 lines 4 - 7)*.

Claim 22 is directed towards a method corresponding to the same functionality as set forth in Claim 13, specifically:

providing collected bids in a bid database in a network computer arrangement, said collected bids each having an associated seal status indication field for indicating whether each bid is a sealed bid or is an unsealed bid *(pg. 15 lines 8 - 10, Fig. 5 #52; pg. 19 line 21 - pg. 20 line 4)*;

querying by a database query server said bid database for unsealed bids which match parameters of a Broker Profile Matrix associated with a trader console, said trader console comprising an intermediary third party user console communicably disposed between a bidder user console and broker user console *(pg. 13 line 13 - pg. 15 line 7; Fig. 4; pg. 16 lines 8 - 15; a "trader" user is an intermediary third party as shown in Fig. 2 #21, #24 and #25, so a trader console is a console for use by a trader user)* ;

operating by said trader console to buy products or services from said broker user console *(pg. 13 line 13 - pg. 15 line 7; pg. 16 lines 8 - 15)*;

operating by said trader to resell said bought products and services to said bidder user console *(pg. 13 line 13 - pg. 15 line 7; pg. 16 lines 8 - 15)*;

responsive to finding matching unsealed bids for said trader console, delivering by a bid transferor said matching unsealed bids to said trader console wherein delivery of delivery of sealed bids to said trader console is prevented *(unsealed bids are delivered from the bidding system to the trader's console, sealed bids remain at*

the bidding system, per pg. 20 lines 11 - 14, and pg. 21 lines 4 - 7); and displaying on said trader console said delivered matching unsealed bids to a trader console user *(pg. 21 lines 4 - 7).*

Grounds for Rejection For Which Review is Sought per 37 CFR §41.37(c)(1)(vi)

Appellant respectfully requests review by the Board of the rejections of claims 13 and 15 - 31 under 35 U.S.C. §102(e) over U.S. patent 6,985,885 to Goldberg (hereinafter "Goldberg").

Arguments per 37 CFR §41.37(c)(1)(vii)

All of the claims are made over the same reference, Goldberg, and thus, we argue their patentability together.   The Goldberg reference has been employed in earlier rejections as a secondary reference under 35 U.S.C. §103(a), but Goldberg is relied upon as a sole reference for rejections under 35 U.S.C. §102(e) for the first time in the most recent rejections.   It is not clear to Appellant why previous rejections under 35 U.S.C. §103(a) were withdrawn and the most recent rejections were made under 35 U.S.C. §102 over a former secondary reference. As such, this is the first opportunity for Appellant to argue against rejections under 35 U.S.C. §102 over the Goldberg reference, although final rejections have been made over other references several times earlier in the prosecution history.

We respectfully request the Examiner to provide in the Examiner's Answer an explanation of what triggered or caused such a shift in the grounds for rejection, such as what in our amendment was considered broadening or scope shifting, or if it is due to a newer interpretation of the Goldberg reference by the Examiner.

Goldberg is Silent Regarding a Third-Party Trader Console Disposed between An Offering Database a Set of Bidder/Broker Consoles.   We ask the Board to consider in particular that our invention is intended for three-layer auctions in which our trader console is situated between the offering database and the bidders/broker consoles.   This structure of three types of equipment corresponding to three types of users or "parties" in the three-layer auction is coupled with our sealed bid status indicators to enable and perform subsequent blocking or transmission actions of bids, as claimed and described.

In the rationale for the rejections, it was held that Goldberg teaches our trader console at such a third-party intermediary position between an offering database and a set of broker consoles at column 5 lines 54-67, column 6 lines 1-9, and column 2 lines 42-67. We respectfully disagree.

In column 5, lines 54 - 67 through column 6, lines 1 - 9, Goldberg only describes two types of parties in their arrangement, not three:

(1) the server(s) housing the information about the items up for auction, and

(2) the "input terminals" for the bidders to use.

The only thing disclosed as being disposed between the servers and the input terminals is a computer network. But, there is no mention by Goldberg of a *third* type of party, namely our claimed trader consoles, disposed communicably between their servers and their bidder input terminals.

At column 2, lines 42 - 67, there is only a description of a well-known arrangement of a plurality of bidders and an auctioneer, especially focused on a particular auction type using rules according to an author named Vickrey. Similarly to the other cited passages, this passage describes only two types of parties in their auction, the (1) offeror (e.g. the auctioneer), and (2) the bidders.

We respectfully submit that Goldberg merely discloses a method with a traditional or well-known auction having two types of parties – an offering party, and a plurality of bidding parties – and that Goldberg is silent regarding an intermediary third party type of a trader as we have claimed.

For at least this reason, we respectfully submit that an error in examination has occurred for failing to show where in the reference each and every claimed step, element and limitation is found in the reference as required by 35 U.S.C. §102(e).

<u>Goldberg is Silent Regarding Prevention of Delivery of Sealed Bids.</u> The rationale for the final rejections also states that the same passages of Goldberg, namely column 5, lines 54 - 67 through column 6, lines 1 - 9 and column 2, lines 42 - 67, anticipates our claimed functionality of preventing delivery of bids from the offering database to a trader when the bids are indicated as being "sealed". We respectfully disagree.

Column 2, lines 42 - 67, mentions sealed bids, but does not mention their being prevented from transfer to a third party trader because no third party type is disclosed, only an auctioneer and bidder party types are disclosed.

Column 5, lines 54 - 67, through column 6, lines 1 - 9, there is also only a disclosure of offering servers and bidder input consoles. Disclosure of a third party type console corresponding to our trader consoles is missing.

Instead, we respectfully point out that Goldberg's sealed bids are not prevented from transfer at all, but instead, are always transferred but are encrypted in a data container (e.g. a packet) until unsealed (see Goldberg at column 7 regarding Secure Sockets Layer and encrypted

containers).

We respectfully submit that transferring encrypted sealed bids does not properly anticipate our claim of prevention of transfer of sealed bids. Functionally, there is a great difference, wherein receipt of an encrypted bid by an auction party might lead cheating in the sealed bidding process by hacking or defeating the encryption mechanism in order to peek at the bids values.

For at least this reason, we respectfully submit that an error in examination has occurred for failing to show where in the reference each and every claimed step, element and limitation is found in the reference as required by 35 U.S.C. §102(e).

Non-Obvious Differences Between Our Claims and Goldberg

The final rejections under 35 U.S.C. §102(e) have been shown to be erroneous because our claims contain significantly different elements, steps, and limitations that those disclosed by Goldberg. Because of these considerable differences, and because there is no implicit or explicit suggestion by Goldberg to make such significant changes to their invention, we respectfully submit that rejections under 35 U.S.C. §103(a) would also be inappropriate.

For example, if one were to modify Goldberg to prevent delivery of their encrypted bids to their bidder, then the desired functionality of Goldberg's system in which the bidder is allowed to decrypt the bids would be destroyed and would render their system undesirable for its intended functions. This is because Goldberg's security mechanisms are fundamentally different than the approach we have claimed, and as such, mixing or modifying one to resemble the other would result in inoperability or less-than-optimal operability.

Request for Reversal or Remand

We respectfully request reversal of the rejections of all claims. If the Board determines to remand the application to the Examiner, we respectfully request an inquiry be made to the Examiner to show specifically what in the Goldberg disclosure the Examiner considers to be a third party type console disposed communicably between an offering database and one or more bidder consoles, and how the Examiner reasons that transmission of encrypted sealed bids is the same as blocking or preventing the transmission of sealed bids under 35 U.S.C. §102(e).

Respectfully Submitted,

/ *Robert Frantz* /

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Claims Appendix

per 37 CFR §41.37(c)(1)(viii)

Clean Form of Amended Claims

1 - 12 (cancelled)

13. (previously presented) A sealed bid sales offering system comprising:

a bid database in a network computer arrangement containing collected bids, said collected bids

      each having an associated seal status indication field for indicating whether each bid is a

      sealed bid or is an unsealed bid;

a database query server querying said bid database for unsealed bids which match parameters of

      a Broker Profile Matrix associated with a trader console, said trader console comprising

      an intermediary third party user console communicably disposed between a bidder user

      console and broker user console, said trader console operating to buy products or services

      from said broker user console, and operating to resell said bought products and services

      to said bidder user console;

a bid transferor responsive to finding matching unsealed bids for said trader console delivering

      said matching unsealed bids to said trader console, and preventing delivery of sealed bids

      to said trader console; and

a display on said trader console of said delivered matching unsealed bids to a trader console user.

14. (cancelled)

15. (previously presented) The sealed bid sales offering system as set forth in Claim 13 wherein
said database query server comprises an Internet server.

16. (previously presented)   The sealed bid sales offering system as set forth in Claim 13 wherein said database query server comprises a Hyper Text Transfer Protocol (HTTP) server.

17. (previously presented)   The sealed bid sales offering system as set forth in Claim 13 wherein said trader console comprises a web browser.

18. (previously presented) The system as set forth in Claim 13 wherein said database query server retrieves unsealed bids from said bid database which meet criteria including a trader's location code.

19. (previously presented) The system as set forth in Claim 13 wherein said database query server retrieves unsealed bids from said bid database which meet criteria including a match with a trader's goods category code.

20. (previously presented) The system as set forth in Claim 13 further comprising a restricted access administrator console communicative with said bid database converting sealed bids to unsealed bids.

21. (previously presented) The system as set forth in Claim 13 further comprising a system clock or timer determining which seals of sealed bids have expired as a criteria for retrieving unsealed bids.

22. (previously presented) A sealed bid sales offering method comprising:

providing collected bids in a bid database in a network computer arrangement, said collected
      bids each having an associated seal status indication field for indicating whether each bid
      is a sealed bid or is an unsealed bid;

querying by a database query server said bid database for unsealed bids which match parameters
      of a Broker Profile Matrix associated with a trader console, said trader console
      comprising an intermediary third party user console communicably disposed between a
      bidder user console and broker user console;

operating by said trader console to buy products or services from said broker user console;

operating by said trader to resell said bought products and services to said bidder user console;

responsive to finding matching unsealed bids for said trader console, delivering by a bid
      transferor said matching unsealed bids to said trader console wherein delivery of delivery
      of sealed bids to said trader console is prevented; and

displaying on said trader console said delivered matching unsealed bids to a trader console user.

23. (previously presented) The method as set forth in Claim 22 wherein said querying comprises
a Hyper Text Transfer Protocol (HTTP) query.

24. (previously presented) The method as set forth in Claim 22 further comprising providing a
web browser trader console.

25. (previously presented) The method as set forth in Claim 22 wherein said querying comprises
retrieving unsealed bids from said bid database which meet criteria including a trader's location
code.

26. (previously presented) The method as set forth in Claim 22 wherein said querying comprises
retrieving unsealed bids from said bid database which meet criteria including a match with a
trader's goods category code.

27. (previously presented) The method as set forth in Claim 22 further comprising providing a restricted access administrator console communicative with said bid database, and converting sealed bids to unsealed bids by said administrator console.

28. (previously presented) The method as set forth in Claim 22 further comprising using a system clock or timer to determine which seals of sealed bids have expired as a criteria for retrieving unsealed bids.

Evidence Appendix

per 37 CFR §41.37(c)(1)(ix)

No evidence has been submitted by applicant or examiner pursuant to 37 CFR §§1.130, 1.131, or 1.132. For the convenience of the Board, Burko's provisional patent application is reproduced here.

Related Proceedings Appendix

per 37 CFR §41.37(c)(1)(x)

No decisions have been rendered by a court or the Board in the related proceedings as identified under 37 CFR §41.37(c)(1)(ii).